

SC 489 of 2024
Present. Sri. Sanjay Naskar, Ld. ADJ, FT 3rd Court, Basirhat.
JO Code (UID No) WB01025

Order No. 4
Dated:- 20.06.2024.

Out of two accused persons, the accused Sushanta Sardar @ Uttam is produced from J.C. and he is taken into custody and remanded to J.C. till date. The other accused Shib Prasad Hazra is not produced. Superintendent of the concerned correctional home is directed to produce the accused on the date fixed positively.

The Ld Advocate for both the accused have filed two separate bail applications praying for bail. The Ld. Advocate for the de facto complainant is present.

The O.C. Sandeshkhali P.S. has submitted report in view of order no.3 dated, 06.06.2024. Let it be kept with the record.

The Ld. Advocate for the accused persons have not pressed the bail application dated, 05.06.2024.

The bail applications dated, 20.06.2024 are taken up together for hearing.

The I.O. is present. C.D. is produced.

The Ld. Advocate for the accused has filed the certified copy of FIR of Sandeshkhali P.S. Case no. 16 of 2024 and 17 of 2024 along with other documents. Let it be kept with the record.

The Ld. Advocate for the accused submitted that the V.G. did not utter a single word regarding commission of offence of alleged rape upon her either in her F.I.R. dated, 08.02.2024 or in her statement recorded u/s 161 of Cr.P.C. on 08.02.2024. Even she did not disclose the name of the accused to the treating doctor at the time of her medical examination on 21.02.2024. On 15.02.2024 her statement was recorded u/s 164 of Cr.P.C. wherein she first brought the allegation of committing rape upon her which is after thought, concocted. Victim girl could not state the specific date, time of commission of the alleged offence. The accused Sushanta Sardar @ Uttam was under the custody of the police and was undergoing treatment by the local doctor on 07.02.2024 around 15:15 hours as would appear from the certified copy of the FIR being Sandeshkhali P.S. case number 16 of 2024. So, according to the Ld. Advocate for the accused, the presence of the accused Sushanta Sardar @ Uttam at the

alleged P.O. on the alleged date, time is not believable. So, they pray for bail on any condition.

Ld. P.P. in charge raised objection.

Ld. Advocate for the de facto complainant cum victim raised objection and submitted that the same submission of the defence counsel has been advanced in C.M.C. no. 148 of 2024 but it was turned down. The case has been committed and ready for trial and so, the accused should not be granted bail otherwise they being members of Zilla Parisads are highly influential persons in the locality and they may tamper the evidences.

Heard both sides. Perused the record.

It appears that the charge sheet came to be lodged against the accused persons for committing the offence punishable u/s 341/323/354A/354B/509/506/34/325/307/376D of IPC. Admittedly the section 307 and 376D of IPC have been added subsequent to lodging of FIR.

In the FIR it is alleged that on 07.02.2024 around 3:00 p.m. the daughter of the victim girl was playing with other children on the pucca road, by the side of the house of the informant. Hearing the noise of a procession of large number of people, the victim girl cum de facto complainant came out of her house to take her daughter inside her room and then under the leadership of both the accused persons, some persons of the said procession started abusing her in filthy languages. It is further alleged that out of previous grudge, the accused Sushanta Sardar pulled her hands. As she was not agreeing to go with them, he slapped her catching her lock of hairs and pushed her to the ground to kill her and threatened to set fire on the houses of other villagers and he stepped on her and tried to disrobed her. Hearing her hue and cry when the villagers came to the spot, they fled away.

Within the four-corners of FIR or her statement u/s 161 of Cr.P.C. recorded on 08.02.2024, the victim girl did not state anything about commission of alleged offence of rape and it is rightly pointed out by the Ld. Advocate for the accused.

In her statement recorded u/s 164 of Cr.P.C. on 15.02.2024 she first disclosed that the accused persons committed rape upon her at different occasions for a continuous period of last one year. Whereas in her statement recorded u/s 161 of Cr.P.C. on 24.02.2024 she stated

that six months ago before the dispute arose the accused persons committed rape upon her. If it is taken as true for argument sake that she could not disclose the alleged incident for last one year because the accused being highly influential persons in the locality, then why she could not disclose the incident of alleged rape when she first dared to lodge FIR on 07.02.2024. Even she did not disclose the name of her assailants to the treating doctor on 21.02.2024. She also could not produce her wearing apparels which she was bearing on the alleged date of incident and which might have soaked or stained with semen. The independent witnesses whose statement has been recorded u/s 161 of Cr.P.C. could not attribute specific allegation of rape to the accused persons. So, this court finds that the material so collected in the C.D and in the record are insufficient for holding custodial trial of the accused.

With regard to the submission of the Ld. Advocate for the victim girl it is pertinent to mention that this court is not holding CMC file and this court is entrusted to hold the trial and so, this court is to decide independently without being influenced by the order of CMC no. 148 of 2024 whether there is sufficient ground for custody trial of the accused. The Ld. Advocate for the victim girl also submitted that there is chance of tampering evidence if they bailed out because the accused are influential persons. With regard to the same it is pertinent to mention that stringent conditions should be imposed to secure fair trial. But only on that ground as agitated by the Ld. Advocate for the victim girl, the bail prayer cannot be refused in this circumstances, where the victim girl herself made contradictory statements with regard to the alleged offence of rape and the remaining alleged sections are not so seriously dealt with.

Accordingly, prayer for bail for both the accused is hereby considered and allowed. Both the accused persons namely, Sushanta Sardar @ Uttam and Shib Prasad Hazra may find bail on furnishing bond of Rs.10,000/- each with two sureties of Rs.5,000/- each, subject to the satisfaction of Ld ACJM, Basirhat, on the following conditions id to JC till date ; that

a) the accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court;

- b)** the accused shall attend this Court once in fortnight and on every date of hearing of the case and shall continue so to attend until otherwise directed by the Court;
- c)** not to take undue advantage of liberty or misuse the liberty of bail;
- d)** not to act in a manner injurious to the interest of the prosecution;
- e)** not to leave the country without permission of the court and surrender passport, if any, to this court within a week;
- f)** to furnish the present address of their residence to the O/C of local PS and to this Court at the time of execution of the bond and shall not change the residence without prior permission of this court;
- g)** not to enter the jurisdiction of the District North 24 Parganas till the completion of evidence of the prosecution witnesses except for the purpose of attending any court proceeding or investigation pending against the accused persons.

To 26-07-2024 for production or appearance of the accused persons and appointment of regular Ld. P.P. incharge. The Ld. District P.P. in charge is requested to appoint regular Ld. P.P. in charge to conduct the trial.

B.C. is directed to comply the order.

D/C by me.

A.D.J., FTC 3rd Court, Basirhat.